

PATTON BOGGGS
ATTORNEYS AT LAW

RECEIVED
FEC MAIL CENTER
2008 OCT 21 AM 10:40

2550 M Street, NW
Washington, DC 20037 1350
202 457 6000

Facsimile 202 457 6315
www.pattonbogggs.com

ORIGINAL

October 24, 2008

Glenn M. Willard
(202) 457-6359

COURIER

Ms Thomasenia P Duncan, General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, N W
Washington, DC 20463

Re MUR 6084 (John Kennedy for U S Senate)

Dear Ms Duncan

John Kennedy for U.S. Senate, Inc and Keith Davis, as treasurer, (collectively "the campaign"), through counsel, hereby respond to the complaint filed by Jay Howser with *Friends of Mary Landrum*. The complaint alleges that the campaign aired an advertisement ("Museum") with the correct written "stand by your ad" disclaimer at the beginning instead of the end of the ad as required under 11 C.F.R. § 110.11(c)(3)(iii).

The campaign was aware of this placement requirement at the time it created "Museum", and realized after it first broadcast the ad that it had made an inadvertent mistake in placing the written disclaimer at the beginning of the ad.¹ The written disclaimer, however, appeared, as required by law, in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, and for a period of at least four seconds.² Within 24 hours of first airing the advertisement, which was broadcast for seven days, the campaign moved the written disclaimer from the beginning to the end of the ad.³ At all broadcast times, the advertisement had an unobscured, full-screen view of John Kennedy making the required oral "stand by your ad" statement.⁴ The advertisement also had the required written "paid for by" disclaimer.⁵

¹ Mandy Fletcher Affidavit ¶¶ 2, 3

² *Id.* at ¶ 4

³ *Id.* at ¶ 5

⁴ *Id.* at ¶ 6

4986146

29044251982

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2008 OCT 24 A 11:59

PATTON BOGGS LLP
ATTORNEYS AT LAW

Ms. Thomasenia P. Duncan

October 24, 2008

Page 2

2550 M Street, NW
Washington, DC 20037 1350
202 457 6000

Facsimile 202 457 6315
www.pattonboggs.com

This "violation" was technical in the truest sense of the word and did not deprive the viewing audience of any information required in disclaimers by federal election law. Obviously, whatever the public interest in compelled written disclaimers, it was present in the advertisement at issue. The oral statement was lawfully stated in the ad, as was the written disclaimer. Only the placement of the written disclaimer was mistaken and for less than 24 hours out of a seven-day run.

Most importantly, the Commission has ample precedent for dismissing disclaimer violations when they involved outright omissions of "stand by your ad" statements, not merely the misplacement at issue here. *See* MURs 5775R (Pryce) (no oral statement), 5834 (Burner) (no written statement); 5727 (Kaloogian and Roach) (no written statement); and 5629 (Newberry) (no written statement). What the Commission recognized in *Pryce* – "[I]t appears that viewers had all the salient information" – it must surely see here as well.

Consequently, consistent treatment and a view toward whether the "stand by your ad" provisions of the law were fulfilled should compel the Commission to dismiss this matter and not waste its resources.

Sincerely,


Glenn M. Willard

⁵ *Id.* at ¶ 7